entirely unable to follow the reasoning of the court. The act is an act to establish a board of parole commissioners for the parole and government of paroled prisoners. It is not an act to give rights to prisoners to be paroled or even to be allowed to make application for parole. It provides that the state board of prison directors shall have power to establish rules and regulations under which any prisoner who may have served one year of his sentence may be allowed to go upon parole. It is all permissive and not mandatory. Its only qualification is that the board may not grant, or make rules and regulations for the granting of, paroles to prisoners who have not served at least one year of their sentence.

Perhaps the rule of the board of prison directors is arbitrary and harsh and not in keeping with the spirit of prison reform. We incline to think that it is. Perhaps the law should make it the right of a prisoner, after serving one year, to apply for a parole, thus throwing upon the board the onus of saying that he has not earned it: a matter which seems to us debatable. But it is not the province of the court to read into the act a meaning which is not expressed; and this, in our opinion, is what it has done.

We fully agree with the dissenting opinion of Mr. Justice Shaw, and, as he says, "the only right granted to a prisoner by the decision of the court would seem to be utterly useless. The prisoner is given the poor comfort of being allowed to have his application filed by the clerk and received and considered by the board, with the statement that after receiving it the board may refuse it with or without reason, and that their action is beyond review and final." W. C. J.

PUBLIC UTILITY: POWER OF RAILROAD COMMISSION TO ORDER EXTENSION OF SERVICE.—At first appearance it seemed that in rendering the decision of *Del Mar Water Company v. Eshleman*[1] the Supreme Court was taking another step in curtailing the powers of the Railroad Commission. But in denying the petition for a rehearing[2] the court indicated that all that it had actually decided was that the party demanding service from the water company "is not and is not found by the Commission to be within the district, or area, to the use of which the water owned by that company is dedicated".

However, before reaching this manifestly sound conclusion on a comparatively minor issue, the court gave expression to language which led the Commission to suggest in its petition for a rehearing that the result of the decision would be that "effective regulation in this state must revert to that somnolent condition from which it awakened when this Commission took office". The Commission further informed the court that "if this court is right in its determination of the questions here involved, then we

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[1] (Apr. 11, 1914), 47 Cal. Dec. 571.
[2] (May 13, 1914), 47 Cal. Dec. 631.

have largely labored in vain, and we will feel that in the future we will be impotent to accomplish much of consequence within the official positions which for the time we have the honor to fill".

The Commission took particular exception to the concurring opinion of Mr. Justice Melvin, which assumed that the finding of the Commission as to the public character of the Del Mar Water Company was not conclusive on the court, but that the court might determine for itself whether there was sufficient justification in the facts of the case to warrant the Commission in making this ultimate finding. While no authority is cited for the position thus taken, support might well have been found in the line of cases which holds that "an ultimate finding of fact which is drawn as a conclusion from facts previously found, cannot stand if the specific facts upon which it is based do not support it".[3] If the determination of whether or not a body is a public utility is not a question of law, it is at least such an ultimate finding of fact that the evidentiary findings made by the trial body may be examined by the appellate tribunal to ascertain if it conforms thereto.

The majority opinion by Shaw, J., apparently regards as binding on it such findings as the Commission had made. But it refused to accept a finding by the Commission that "the water company owned and was operating a water system for compensation" as equivalent to a finding that it was engaged in operating its plant for public use. The answer of the Commission to this was that the legislature in 1913 had exercised the power conferred upon it by the constitutional amendment of 1911[4] by declaring that any person or corporation operating a water system in this state is a public utility.[5] Since the determination of the constitutionality of this statute was not necessary to the decision of the case, the court was disinclined to consider it. Accordingly, in the opinion denying a rehearing it pointed out that all that was decided was that, admitting plaintiff to be a public utility, still the land in question was not within the area to which it had dedicated its water. It seems probable, however, that when a case directly involving this statute does arise, the court will be justified in repeating the language here used as *obiter dictum*, "even a constitutional declaration cannot transform a private enterprise, or a part thereof, into a public utility and thus take private property for public use without condemnation or payment". It is no answer to this to say that the title to the property

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[3] People v. Reed (1889), 81 Cal. 70, 22 Pac. 474, 15 Am. St. Rep. 22; Geer v. Sibley (1890), 83 Cal. 1, 23 Pac. 220; Savings and L. Soc. v. Burnett (1895), 106 Cal. 514, 39 Pac. 922; McDonald v. Randall (1903), 139 Cal. 246, 72 Pac. 997; Mason v. Lievre (1904), 145 Cal. 514, 78 Pac. 1040.

[4] Cal. Const. (1911), art. XII, § 23.

[5] Cal. Stats. 1913, chap. 80, p. 84.

is not taken away from the owner, for one of the essential attributes of the ownership of property is the power to determine how it shall be used. To say to one who has made such a limited or partial dedication of his property that he must furnish water to persons not within the area he has undertaken to serve, is to that extent a deprivation of his property.[6] R. W. M.

RAILROAD COMMISSION: REGULATION OF TELEPHONE COMPANIES.—In the March number[1] we reviewed the decision of the California Supreme Court in the case of Pacific Telephone and Telegraph Company v. Eshleman.[2] That case was an application for a writ of review by the Pacific Telephone and Telegraph Company against the Railroad Commission of the State of California. The specific matter complained of was an order issuing from the Commission directing the Pacific Telephone Company to make physical connections at Willows and at Red Bluff between its own lines and the lines of two local companies, the Glenn County Telephone Company and the Tehama County Telephone Company, in order that the subscribers of the local companies might enjoy the long distance service of the Pacific Company. The California Supreme Court ruled that the order of the Commission should be annulled.

Among a number of questions presented and decided by the California court was the question whether the Railroad Commission in assuming to make the order was acting under the police power or under the power of eminent domain. The holding of the court was that the Commission was attempting to exercise the right of eminent domain, and as this was done without providing just compensation, the order of the Commission was void. We ventured to express our dissent from this view. We took the position that the Commission had proceeded in accordance with the Public Utilities Act;[3] and that this statute intended to direct an exercise of the police power, and did not mean to confer upon the Commission the power of eminent domain.

There were no direct precedents in telephone or telegraph cases to determine the chief question at issue. There were several cases, however, where orders requiring physical connections between railroads had been held to fall within the scope of the police power.[4]

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[6]. Hildreth v. Montecito Creek Water Co. (1902), 139 Cal. 22, 29, 72 Pac. 395; Leavitt v. Lassen Irr. Co. (1909),157 Cal. 82, 106 Pac. 404, 29 L. R. A. (N. S.) 213; Thayer v. Cal. Development Co. (1913), 164 Cal. 133, 137, 128 Pac. 21; Wiel, Water Rights in the Western States, 3d ed., § 1281.

[1] 2 Cal. Law Rev. 225.

[2] (1913), 46 Cal. Dec. 551, 137 Pac. 1119.

[3] Cal. Stats. Extra Sess. 1911, p. 25.

[4] Wisconsin, Minnesota and Pacific R. R. v. Jacobson (1900), 179 U. S. 287; State of Washington ex rel. Oregon Railroad and Navigation Co. v. Fairchild (1911), 224 U. S. 510; Grand Trunk Ry. v. Michigan Ry. Commission (1913), 231 U. S. 457.